

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

* * * * *

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IN THE MATTER OF)
)
IMPLEMENTATION OF THE)
LOCAL COMPETITION)
PROVISIONS IN THE)
TELECOMMUNICATIONS)
ACT OF 1996)

CC DOCKET NO. 96-98

INTERCONNECTION BETWEEN)
LOCAL EXCHANGE CARRIERS)
AND COMMERCIAL MOBILE)
RADIO SERVICE PROVIDERS)

CC DOCKET NO. 95-185

PETITION FOR RECONSIDERATION BY
THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

September 26, 1996

APR 15 1995
JAN 30 1995
The Public Utilities Commission of the State of Colorado ("COPUC") hereby requests reconsideration of the Federal Communications Commission ("FCC") First Report and Order, FCC 96-325. In support of its petition, the COPUC respectfully states:

I.

The COPUC derives its authority wholly from the Colorado Constitution and Colorado statutory provisions. The Colorado General Assembly has granted to the COPUC extensive and broad regulatory powers and vests jurisdiction exclusively with the COPUC over the adequacy, installation, and extension of telecommunications services in the State of Colorado.

II.

During the 1995 legislative session, the Colorado General Assembly adopted House Bill 95-1335 ("HB 1335")¹ now codified as §§ 40-15-101 *et. seq.*, C.R.S. In that statute, the Legislature determined that competition in the market for basic local exchange service is in the public interest. (See § 40-15-101, C.R.S.) Consistent with that determination, HB 1335 directed the COPUC to

¹ Signed into law by Governor Roy Romer on May 24, 1995.

encourage competition in the basic local exchange market by adoption and the implementation of the appropriate regulatory mechanisms to replace the existing regulatory framework. HB 1335 specifically commanded the COPUC to adopt rules necessary to implement competition in the local exchange market, such rules to become effective by July 1, 1996.

The COPUC, in accordance with those directives, has since conducted a number of rulemaking proceedings and has adopted rules to effectuate competition in the market for local exchange service. These rules are the result of Docket Nos. 95R-553T (9-1-1 Services), 95R-554T (Local Number Portability), 95R-555T (Certification), 95R-556T (Interconnection and Unbundled Network Elements), 95R-557T (Resale of Local Exchange Services), and 95R-558T (Universal Service).

During the 1996 legislative session, the General Assembly adopted House Bill 96-1010 (HB 1010). This statute mandated that the COPUC adopt the tariffs necessary to begin competition in the local exchange market on July 1, 1996. In particular, HB 1010 directs the COPUC to require all telecommunications service providers that will provide unbundled facilities or functions, interconnection, services for resale, or local number portability pursuant to the rules adopted under paragraph § 40-15-503, C.R.S.,

to file tariffs containing temporary interim rates, terms, and conditions for the sale for those services. The COPUC was instructed to conduct expedited proceedings on proposed interim tariffs for unbundled facilities or functions, interconnection, services for resale, and local number portability. Based upon that expedited review, we were directed to approve or modify the filed tariffs on an interim basis. Notably, HB 1010 directs that the COPUC conclude its review of filed interim tariffs and issue decisions in an expedited manner such that the tariffs, as approved or modified by the Commission, shall become effective on or before July 1, 1996.

Pursuant to the provisions of HB 1010, we adopted Emergency Rules on May 21, 1996 in our Decision No. C96-521. In these Emergency Rules, the telecommunications service providers that will provide unbundled facilities or functions, interconnection, services for resale, or local number portability, were directed to file tariffs pursuant to the rules that were adopted in § 40-15-503(2)(a), C.R.S., with a proposed effective date of July 1, 1996.

The interim tariffs that U S West Communications ("USWC") was directed to file were to be in compliance with the rules adopted in Docket No. 95R-554T for number portability, Docket No. 95R-556T for interconnection, unbundling, and collocation, and 95R-557T for

resale. The purpose of the interim tariffs is to allow the competitive local exchange providers: 1) to purchase unbundled network elements from the incumbent local exchange carrier, USWC; and 2) to resell the present tariffed services of USWC. Pursuant to HB 1010, the interim tariffs are subject to a true-up to the final rates adopted by the COPUC.

In accordance with the Emergency Rules (Decision No. C96-521), USWC filed Advice Letter No. 2610 on May 31, 1996 containing its proposed interim tariffs. The COPUC established Docket No. 96S-233T for the purpose of reviewing the interim tariff filing of USWC. USWC filed Advice Letter No. 2611 on July 1, 1996 containing its proposed permanent tariffs. The COPUC established Docket No. 96S-331T for the purpose of reviewing the final tariff rates proposed by USWC. Subsequent to the determination of the permanent rates through a fully adjudicated hearing process, which will include a complete review of all cost information submitted by USWC in support of its filing, a true-up of the interim rates to the permanent rates will be accomplished by of means refunds or additional payments, with interest, as determined by the COPUC. The review of the permanent rates will also include the application of all state and federal statutes as they apply.

III.

The COPUC respectfully petitions the FCC to reconsider or alternatively clarify certain of its provisions in its new Part 51, 47 C.F.R. Rules adopted in the FCC's Report and Order 96-325. Specifically, Part 51.505(e) provides that the incumbent LEC must prove to the state commission that rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element that complies with the cost methodology set forth by the FCC in § 51.511. Further, in § 51.505(e)(1), state commissions may set a rate outside specified proxy range and ceilings "only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 of this part..." These provision leave unresolved issues and do not provide clear definition of the methodology.

The COPUC also requests reconsideration of the FCC position that CMRS providers not be treated as LECs until the FCC makes a finding that such treatment is warranted.

51.505(e) Cost study requirements:

Part 51.505(e) raises the issue of from whom or in what manner should differences between the embedded costs incurred by

the incumbent LEC and its forward-looking economic costs be recovered. To propose that forward-looking, per unit, economic costs be used as a ceiling for the rate for a network element prematurely precludes the possibility of any portion of this difference being recovered from the competing telecommunications carriers. Such a mechanistic constraint should not be included at this time.

Therefore the COPUC proposes that the first sentence of 51.505(e) be modified to read: "An incumbent LEC must prove to the state commission that the rates for each element it offers are largely based upon the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511 of this part."

The last portion of 51.505(e) describes how cost studies are to comply with the methodology set forth in this section and § 51.511. However, it is the opinion of COPUC that the specified methodology is not well-defined in the specified sections. Thus the LEC is required to make proof and a state commission is required to give full and fair effect to economic costs based upon an unclear or unspecified methodology. To avoid confusion in proceedings before state commissions, the state commissions should

specify a methodology that is consistent with the general costs methodology provided in § 51.505 and § 51.515.

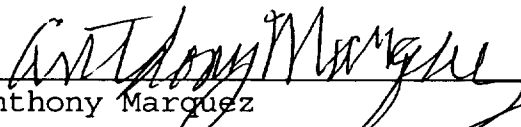
Consideration of CMRS Providers as LECs:

In paragraph 1004 the FCC states that it was not persuaded by those arguing that CMRS providers should be treated as LECs and that the FCC declines at this time to treat CMRS providers as LECs. It is the position of the COPUC that it is not the technology employed in the provision of fixed site basic local exchange service that determines the classification of the provider as a LEC. Rather, it is the type of service that is provided that will determine the classification of the provider. The COPUC agrees that current providers of cellular services to mobile customers does not necessarily constitute the provision of basic local exchange service.

COPUC has already received requests from companies that are interested in providing the loop plant from an end user location to the incumbent LEC switch. It is our intention to treat such providers as competing LECs and allow them to interconnect with the incumbent LEC switches and purchase the necessary unbundled elements to provision a complete basic local exchange service. The COPUC strongly opposes the notion that if an alternative loop

provider employs copper technology in the provision of its loops to connect with the incumbent LEC switch that such a provider is classified as a LEC whereas a loop provider that utilizes radio technology is somehow exempt from regulation by the COPUC or the FCC as a LEC. The COPUC supports previous statements issued by Commissioner Chong that the nature of the service being provided, not the manner it is provided, determines the classification of the service, i.e. "technology neutral."

The COPUC respectfully requests the FCC reconsider its position to wait until some future time to determine if providers such as CMRS should be treated as LECs. If CMRS providers are holding themselves out as local exchange providers or alternative providers of local exchange service, such providers should be treated as LECs.



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IN THE MATTER OF IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS
IN THE TELECOMMUNICATIONS ACT OF 1996, CC DOCKET NO. 96-98

IN THE MATTER OF INTERCONNECTION BETWEEN LOCAL EXCHANGE CARRIERS
AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, CC DOCKET NO. 95-185

CERTIFICATE OF SERVICE

I hereby certify that an original and sixteen copies of the above and foregoing Petition for Reconsideration by the Public Utilities Commission of the State of Colorado in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and in the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers was sent via Federal Express on this 26th day of September, 1996, to the following:

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One copy was also sent via Federal Express to International Transcription Service, Room 640, 1990 M Street, N.W., Washington, DC 20036. A diskette copy was sent to Ernestine Creech, Common Carrier Bureau, Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, DC 20554,

and a true and correct copy has been deposited in the United States mail, postage prepaid, addressed to the following.

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